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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,368	10/12/2001	Carlos M. Collazo	020897-000110US	9744
20350	7590	02/23/2005	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			HOLMES, MICHAEL B	
			ART UNIT	PAPER NUMBER
			2121	

DATE MAILED: 02/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/976,368	COLLAZO, CARLOS M.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Michael B. Holmes	2121	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE (3) MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 12 October 2001.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-9 is/are rejected.
- 7) Claim(s) 6 and 9 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 08 February 2002 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____. |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)              |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>0125&amp;08232002/1013</u> . | 6) <input checked="" type="checkbox"/> Other: <u>Detailed Office Action</u> .            |



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**Examiner's Detailed Office Action**

1. This Office Action is responsive to application 09/976,368, filed October 12, 2001.
2. Claims 1-9 have been examined.

**Specification Objection**

3. Claim 6 refers to a signals, however, applicant makes no specific mention of signal processing in the written description of the specification regarding signal generation.
4. Claim 9 refers to a “carrier wave” however, applicant makes no specific mention of a carrier wave in the written description of the specification regarding a carrier wave.

**Claim Rejections - 35 USC § 101**

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Applicant's invention disclosed in claim 9 is directed to non-statutory subject matter. It is the examiner's position applicant's invention as claimed is not limited to a *practical application*

in the technological arts. While the claim *appear* to be directed towards subject matter performed on a computer. Examination has revealed no computer-readable medium disclosed by applicant.

7. Therefore, claim 9 are rejected under 35 USC § 101.
8. It should be noted that if the claims were amended to recite a “computer,” “processor,” “computer-implemented,” or whatever word(s) or phrase(s) the specification recites for that feature of the invention the rejection under 35 USC § 101 would be withdrawn.

### Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

10. The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

11. Claims 1, 7 & 8 are rejected under 35 U.S.C. 102(e) as being anticipated by *Kutcher* (USPN 6,301,615).

Regarding claim 1. *Kutcher* describes a method for monitoring the performance of a digital networked system [see FIG. 1, C 3, L 54-65 *Examiner interprets digital as a computer in which operations are based on two or more discrete states i.e., "1" or "0" binary digital computers are based on these two states which logically are "on" and "off."*], wherein nodes are executing in components in the networked system, wherein the nodes provide information on at least one aspect of the functioning of a component in the server system, wherein the nodes are organized as multiple groups [see FIG. 2, C 4, L 53 to C 5, L 21 *Examiner interprets a node as a junction of some type as in networking, a device, such as a client computer, a sever, or a shared printer, that is connected to the network and is capable of communicating with other network devices*], the method comprising:

generating a value indicating performance of a first component by a node in a first group [see C 3, L 19-53 & FIG. 2, C 4, L 53 to C 5, L 21 *Examiner interprets the first group as computers 31 & 32, running performance monitoring utilities 21(a)-21(e)*];

transferring the value to a second node in a second group [see C 3, L 19-53 & FIG. 2, C 4, L 53 to C 5, L 21 *Examiner interprets the second group as servers 22(a) & 22(b) which receive the output of the first group, running performance monitoring utilities 21(a)-21(e)*];

modifying the value to indicate performance of a second component [see C 3, L 19-53 & FIG. 2, C 4, L 53 to C 5, L 21 *Examiner interprets the second component as the new threads 24(a)-24(e)/ 25(a)-25(b) which are the created by servers 22(a) & 22(b) receiving the output of the first group, running performance monitoring utilities 21(a)-21(e)*]; and

using the modified value to indicate performance of the digital networked system [see C 3, L 19-53 & FIG. 2, C 4, L 53 to C 5, L 21 *Examiner interprets this as Superserver 23*].

Regarding claim 7. *Kutcher* describes an apparatus for monitoring the performance of a digital networked system [*see FIG. 1, C 3, L 54-65 Examiner interprets digital as a computer in which operations are based on two or more discrete states i.e., "1" or "0" binary digital computers are based on these two states which logically are "on" and "off."*], wherein the apparatus includes a processor for executing instructions for obtaining information in a digital networked system, wherein nodes are executing in components in the networked system, wherein the nodes provide information on at least one aspect of the functioning of a component in the server system, wherein the nodes are organized as multiple groups [*see FIG. 2, C 4, L 53 to C 5, L 21 Examiner interprets a node as a junction of some type as in networking, a device, such as a client computer, a sever, or a shared printer, that is connected to the network and is capable of communicating with other network devices*], the apparatus comprising:

one or more instructions [*see C 4, L 14-25 & C 10, L 6-22 Examiner interprets this as one or more sequences of one or more instructions contained in main memory of the plurality of computer(s) in the network of FIG. 1*] for generating a value indicating performance of a first component by a node in a first group [*see C 3, L 19-53 & FIG. 2, C 4, L 53 to C 5, L 21 Examiner interprets the first group as computers 31 & 32, running performance monitoring utilities 21(a)-21(e)*];

one or more instructions [*see C 4, L 14-25 & C 10, L 6-22 Examiner interprets this as one or more sequences of one or more instructions contained in main memory of the plurality of computer(s) in the network of FIG. 1*] for transferring the value to a second node in a second group [*see C 3, L 19-53 & FIG. 2, C 4, L 53 to C 5, L 21 Examiner interprets the second group as servers 22(a) & 22(b) which receive the output of the first group, running performance*

*monitoring utilities 21(a)-21(e)];*

*one or more instructions [see C 4, L 14-25 & C 10, L 6-22 Examiner interprets this as one or more sequences of one or more instructions contained in main memory of the plurality of computer(s) in the network of FIG. 1] for modifying the value to indicate performance of a second component [see C 3, L 19-53 & FIG. 2, C 4, L 53 to C 5, L 21 Examiner interprets the second component as the new threads 24(a)-24(e)/ 25(a)-25(b) which are the created by servers 22(a) & 22(b) receiving the output of the first group, running performance monitoring utilities 21(a)-21(e)];*

*and one or more instructions [see C 4, L 14-25 & C 10, L 6-22 Examiner interprets this as one or more sequences of one or more instructions contained in main memory of the plurality of computer(s) in the network of FIG. 1] for using the modified value to indicate performance of the digital networked system [see C 3, L 19-53 & FIG. 2, C 4, L 53 to C 5, L 21 Examiner interprets this as Superserver 23].*

Regarding claim 8. *Kutcher describes a computer-readable medium comprising a method for monitoring the performance of a digital networked system [see FIG. 1, C 3, L 54-65 Examiner interprets digital as a computer in which operations are based on two or more discrete states i.e., “1” or “0” binary digital computers are based on these two states which logically are “on” and “off.”], wherein nodes are executing in components in the networked system, wherein the nodes provide information on at least one aspect of the functioning of a component in the server system, wherein the nodes are organized as multiple groups [see FIG. 2, C 4, L 53 to C 5, L 21 Examiner interprets a node as a junction of some type as in networking, a device, such as a*

*client computer, a sever, or a shared printer, that is connected to the network and is capable of communicating with other network devices], the computer-readable medium comprising: one or more instructions [see C 4, L 14-25 & C 10, L 6-22 Examiner interprets this as one or more sequences of one or more instructions contained in main memory of the plurality of computer(s) in the network of FIG. 1] for generating a value indicating performance of a first component by a node in a first group [see C 3, L 19-53 & FIG. 2, C 4, L 53 to C 5, L 21 Examiner interprets the first group as computers 31 & 32, running performance monitoring utilities 21(a)-21(e)];*

*one or more instructions [see C 4, L 14-25 & C 10, L 6-22 Examiner interprets this as one or more sequences of one or more instructions contained in main memory of the plurality of computer(s) in the network of FIG. 1] for transferring the value to a second node in a second group [see C 3, L 19-53 & FIG. 2, C 4, L 53 to C 5, L 21 Examiner interprets the second group as servers 22(a) & 22(b) which receive the output of the first group, running performance monitoring utilities 21(a)-21(e)];*

*one or more instructions [see C 4, L 14-25 & C 10, L 6-22 Examiner interprets this as one or more sequences of one or more instructions contained in main memory of the plurality of computer(s) in the network of FIG. 1] for modifying the value to indicate performance of a second component [see C 3, L 19-53 & FIG. 2, C 4, L 53 to C 5, L 21 Examiner interprets the second component as the new threads 24(a)-24(e)/ 25(a)-25(b) which are the created by servers 22(a) & 22(b) receiving the output of the first group, running performance monitoring utilities 21(a)-21(e)]; and*

*one or more instructions [see C 4, L 14-25 & C 10, L 6-22 Examiner interprets this as one or*

*more sequences of one or more instructions contained in main memory of the plurality of computer(s) in the network of FIG. 1] for using the modified value to indicate performance of the digital networked system [see C 3, L 19-53 & FIG. 2, C 4, L 53 to C 5, L 21 *Examiner interprets this as Superserver 23*].*

### Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 2-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Kutcher* (USPN 6,301,615 B1) in view of *Kavanagh et al.* (USPN 5,838,965).

The *Kutcher* reference has been discussed above and does not teach the limitation(s) embodied in claim 2-6. However, *Kavanagh et al.* teaches the limitation(s) of claims 2-6.

Regarding claim 2. *Kavanagh et al.* teaches the method of claim 1, wherein nodes include a system-level object [see Abstract, FIG. 2, C 4, L 19-53, & C 62, L 41-55, *Examiner interprets the parts which are treated as objects that are employed in the “part management system.”*] It would have been obvious at the time the invention was made to a persons having ordinary skill in the art to combine *Kutcher* with *Kavanagh et al.* because the invention is particularly useful for solving problems in parts management which have existed for a long time (C 1, L 14-19)].

Regarding claim 3. *Kavanagh et al.* teaches the method of claim 1, wherein nodes include a transaction-level object [see C 5, L 64 to C 6, L 16 & C 62, L 41-55, *Examiner interprets transaction as a discrete activity within a computer system such as an entry of a customer order or an update of an inventory item. Transaction are usually associated with database management, order entry, and other online system;* It would have been obvious at the time the invention was made to a persons having ordinary skill in the art to combine *Kutcher* with *Kavanagh et al.* because the invention is particularly useful for solving problems in parts management which have existed for a long time (C 1, L 14-19)].

Regarding claim 4. *Kavanagh et al.* teaches the method of claim 1, wherein groups include pools of nodes [see FIG. 2, C 13, L 46 to C 14, L 42 *Examiner interprets groups including pools of nodes as items 101, 106 & 107 & items 102, 104, 108 & 110;* It would have been obvious at the time the invention was made to a persons having ordinary skill in the art to combine *Kutcher* with *Kavanagh et al.* because the invention is particularly useful for solving problems in parts management which have existed for a long time (C 1, L 14-19)].

Regarding claim 5. *Kavanagh et al.* teaches the method of claim 4, wherein a pool includes a functional resource pool [see FIG. 3, C 14, L 47 to C 15, L 7; It would have been obvious at the time the invention was made to a persons having ordinary skill in the art to combine *Kutcher* with *Kavanagh et al.* because the invention is particularly useful for solving problems in parts management which have existed for a long time (C 1, L 14-19)].

Regarding claim 6. *Kavanagh et al.* teaches the method of claim 5, wherein a user input device is used to generate signals in response to a human action (*a keyboard*), the method further comprising receiving signals from the user input device to indicate that a connection between two pools is desired [*see FIG. 2*]; and creating connections between any functional resource pools in the two pools [*see FIG. 2, FIG. 3, FIG. 4A & FIG. 4B, FIG. 168 & FIG. 169, C 15, L 20 to C 16, L 54, Examiner interprets signal a beep or tone from a computer's speaker or a prompt displayed on a screen that tells a user that the computer is ready to receive input e.g., logging into a system*; It would have been obvious at the time the invention was made to a persons having ordinary skill in the art to combine *Kutcher* with *Kavanagh et al.* because the invention is particularly useful for solving problems in parts management which have existed for a long time (C 1, L 14-19)].

14. Claim 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Kutcher* (USPN 6,301,615 B1) further in view of *Vilhuber* (USPN 6,470,453).

The *Kutcher* reference has been extensively discussed above and does not explicitly teach the limitation of a computer data signal embodied in a carrier wave in claim 9. However, *Vilhuber* explicitly teaches the limitation of a computer data signal embodied in a carrier wave in claim 9.

Regarding claim 9. *Kutcher* teaches one or more instructions [*see C 4, L 14-25 & C 10, L 6-22 Examiner interprets this as one or more sequences of one or more instructions contained in main memory of the plurality of computer(s) in the network of FIG. 1*] for generating a value indicating performance of a first component by a node in a first group [*see C 3, L 19-53 & FIG. 2, C 4, L*

53 to C 5, L 21 *Examiner interprets the first group as computers 31 & 32, running performance monitoring utilities 21(a)-21(e)];*

*Kutcher teaches one or more instructions [see C 4, L 14-25 & C 10, L 6-22 Examiner interprets this as one or more sequences of one or more instructions contained in main memory of the plurality of computer(s) in the network of FIG. 1] for transferring the value to a second node in a second group [see C 3, L 19-53 & FIG. 2, C 4, L 53 to C 5, L 21 Examiner interprets the second group as servers 22(a) & 22(b) which receive the output of the first group, running performance monitoring utilities 21(a)-21(e)];*

*Kutcher teaches one or more instructions [see C 4, L 14-25 & C 10, L 6-22 Examiner interprets this as one or more sequences of one or more instructions contained in main memory of the plurality of computer(s) in the network of FIG. 1] for modifying the value to indicate performance of a second component [see C 3, L 19-53 & FIG. 2, C 4, L 53 to C 5, L 21 Examiner interprets the second component as the new threads 24(a)-24(e)/ 25(a)-25(b) which are created by servers 22(a) & 22(b) receiving the output of the first group, running performance monitoring utilities 21(a)-21(e)]; and*

*Kutcher teaches one or more instructions [see C 4, L 14-25 & C 10, L 6-22 Examiner interprets this as one or more sequences of one or more instructions contained in main memory of the plurality of computer(s) in the network of FIG. 1] for using the modified value to indicate performance of the digital networked system [see C 3, L 19-53 & FIG. 2, C 4, L 53 to C 5, L 21 Examiner interprets this as Superserver 23;*

*Vilhuber teaches a computer data signal embodied in a carrier wave [see Vilhuber; C 4, L 65-67 & FIG. 5, C 15, L 1-29, It would have been obvious at the time the invention was made to a per-*

sons having ordinary skill in the art to combine *Kutcher* with *Vilhuber* because a network system generally includes a number of network devices, such as switches, routers, and others, connected so as to allow communication among the devices and end station devices such as desktop machines, servers, hosts, printers, fax machines, and others. Many companies have a desire to provide remote access to their computer networks, by allowing remote access, individuals can connect to the computer network to use it to work and obtain resource information while located at a remote site (*see C 1, L 13-21*]).

## Correspondence Information

15. Any inquires concerning this communication or earlier communications from the examiner should be directed to Michael B. Holmes, who may be reached Monday through Friday, between 8:00 a.m. and 5:00 p.m. EST. or via telephone at (571) 272-3686 or facsimile transmission (571) 273-3686 or email [Michael.holmesb@uspto.gov](mailto:Michael.holmesb@uspto.gov).

If you need to send an Official facsimile transmission, please send it to (703) 746-7239.

If attempts to reach the examiner are unsuccessful the Examiner's Supervisor, Anthony Knight, may be reached at (571) 272-3687.

Hand-delivered responses should be delivered to the Receptionist @ (Customer Service Window Randolph Building 401 Dulany Street Alexandria, VA 22313) located on the first floor of the south side of the Randolph Building.

A handwritten signature in black ink, appearing to read "Michael B. Holmes".

***Michael B. Holmes***  
Patent Examiner  
Artificial Intelligence  
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United States Department of Commerce  
Patent & Trademark Office

Saturday, February 19, 2005

MBH